1.0 PURPOSE AND NEED FOR ACTION

The proposed federal action is (a) change the administrative process used to implement harvest specifications which are used to manage the groundfish fisheries off Alaska and (b) update the fishery management plans for the BSAI and GOA groundfish fisheries. This Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) analyzes revisions to the harvest specification administrative process for determining and implementing ABCs, TACs, and PSC limits/apportionments for the groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI) and the Gulf of Alaska (GOA). The intent of revisions is to reflect current stock assessment and analytical requirements, to provide for the regulatory development and review process, and to provide adequate prior public review and comment to the Secretary on Council recommendations and additional Secretarial review of proposed harvest specifications.

Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) of 1996, the United States has exclusive fishery management authority over all living marine resources, except for marine mammals and birds, found within the exclusive economic zone (EEZ) between 3 and 200 nautical miles from the baseline used to measure the territorial sea. The management of these marine resources is vested in the Secretary of Commerce (Secretary) and in Regional Fishery Management Councils. In the Alaska region, the North Pacific Fishery Management Council (Council) has the responsibility to prepare fishery management plans (FMPs) for the marine resources it finds require conservation and management. The National Marine Fisheries Service (NMFS) is charged with carrying out the federal mandates of the Department of Commerce with regard to marine fish. The Alaska Regional Office of NMFS and Alaska Fisheries Science Center (AFSC, NMFS' research branch), research, draft, and support the management actions recommended by the Council.

The Magnuson-Stevens Act established that the FMPs must specify the optimum yield from each fishery to provide the greatest benefit to the Nation, and must state how much of that optimum yield may be harvested in U.S. waters. The FMPs must also specify the level of fishing that would constitute overfishing. Using the framework of the FMPs and current information about the marine ecosystem (stock status, natural mortality rates, and oceanographic conditions), the Council annually recommends to the Secretary total allowable catch (TAC) specifications and prohibited species catch (PSC) limits and/or fishery bycatch allowances based on biological and economic information provided by NMFS. The information includes determinations of acceptable biological catch (ABC) and overfishing level (OFL) amounts for each of the FMP established target species or species groups.

An environmental assessment (EA) is prepared pursuant to the National Environmental Policy Act (NEPA) to determine whether a proposed action will result in significant effects to the human environment. If the environmental effects of the action are determined not to be significant based on an analysis of relevant considerations, the EA and resulting finding of no significant impact are the final environmental documents required by NEPA. If it is concluded that the proposal is a major

Federal action significantly affecting the human environment, an environmental impact statement must be prepared.

NEPA requires either an environmental assessment with a finding of no significant impact or an environmental impact statement for all federal actions that may have a significant impact on the human environment. EAs are generally done when an action is not anticipated to have a significant impact on the human environment or to provide additional information to support an environmental impact statement (EIS). The harvest specifications process alternatives examined in this EA/RIR/IRFA will still result in an annual or biennial Federal action that will require further analysis for potential significant impacts from the actual harvest quotas and management measures.

The scope of this analysis does not extend to the setting of any particular TAC or PSC for any of the managed species. The focus of this analysis is the administrative process used to promulgate harvest specifications.[1] The reason is the actual setting of TAC includes discretionary considerations and current information, therefore, it can not be analyzed in advance of each time period they are in effect. The harvest specifications process is an FMP component analyzed in the EIS (NMFS 1998) and recent draft programmatic SEIS (PSEIS) (NMFS 2001c).

1.1 Project Area

This proposed action applied to the BSAI and GOA FMPs. Figure 1.1 shows the waters included in Federal groundfish fisheries off Alaska. The groundfish fisheries occur in the North Pacific Ocean and Bering Sea in the EEZ from 50°N to 65°N. The subject waters are divided into two management areas: the BSAI and the GOA. The BSAI groundfish fisheries effectively cover all the Bering Sea under U.S. jurisdiction, extending southward to include the waters south of the Aleutian Islands west of 170° W. longitude to the border of the U.S. EEZ. The GOA FMP applies to the U.S. EEZ of the North Pacific Ocean, exclusive of the Bering Sea, between the eastern Aleutian Islands at 170° W. longitude and Dixon Entrance at 132°40' W. longitude. These regions encompass those areas directly affected by fishing, and those that are likely affected indirectly by the removal of fish at nearby sites. The area affected by the fisheries necessarily includes adjacent State of Alaska and international waters. Harvest specifications and fishery management measures affect groundfish fishing throughout the BSAI and GOA management areas.

[1]Although, it also addresses some minor issues of updating FMP terminology.

1.2 Current Administrative Procedures for Harvest Specifications

Establishing harvest specifications involves the gathering and analysis of fisheries data. The groups responsible for analyzing and packaging the data for Council consideration are the Council's Groundfish Plan Teams (Plan Teams). These teams include NMFS scientists and managers, Alaska, Oregon, and Washington fisheries management agencies scientists, and university faculty. Using stock assessments prepared annually by NMFS and by the Alaska Department of Fish and Game (ADF&G), Plan Teams calculate biomass, ABC, and OFL for each species or species group, as appropriate, for specified management areas of the EEZ off Alaska that are open to harvest of groundfish. A Plan Team meeting is held in September to review potential model changes and is not usually used for ABC recommendations. In November, the Plan Teams' rationale, models, and resulting ABC and OFL calculations are documented in annual Stock Assessment and Fishery Evaluation (SAFE) reports. The SAFE reports incorporate biological survey work recently completed, any new methodologies applied to obtain these data, and ABC and OFL determinations based on the most recent stock assessments. Periodically, an independent expert panel reviews the assumptions used in the stock assessments for a selected species or species groups and provides recommendations on improving the assessment.

At its December meetings, the Council, its Advisory Panel (AP), its Scientific and Statistical Committee (SSC), and interested members of the public, review the SAFE reports and make recommendations on harvest specifications based on the information about the condition of groundfish stocks in the BSAI and GOA fishing areas. The harvest specifications recommended by the Council for the upcoming year's harvest quotas, therefore, are based on scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. SAFE reports are part of the permanent record on the fisheries.

Specification of the upcoming year's harvest levels currently is a three-step process. First, proposed ABCs, TACs, and PSC limits[2] are recommended by the Council at its October meeting and published in November in the Federal Register for public review and comment. In October, most stock assessments are not yet available, so the proposed specifications are set equal to the current year's specifications.

Second, NMFS annually publishes interim specifications to manage the fisheries from January 1 until they are superceded by the final specifications. The interim specifications are based on the current year's specifications in the same manner as the proposed specifications. As specified in 50 CFR § 679.20(c)(2), interim specifications are one-fourth of each proposed initial TAC (ITAC) and apportionment thereof, one-fourth of each proposed PSC allowance, and the first seasonal allowance of GOA and BSAI pollock and BSAI Atka mackerel. These interim specifications are in effect on

[2]BSAI crab, halibut, salmon and herring limits are set established in regulations and the Council recommends target fishery and seasonal apportionments of these PSC limits. The Council recommends the GOA halibut PSC limits, fishery and seasonal apportionments.

January 1 and remain in effect until superceded by final specifications. For most BSAI target species, the ITAC is calculated as 85 percent of the previous year's TACs (50 CFR § 679.20(b)). The remaining 15 percent is split evenly between the Western Alaska Community Development Quota (CDQ) program reserve and a non-specified groundfish reserve. It is the nonspecified portion of the BSAI TAC reserves that is proposed to be eliminated in Option A. See section 1.4 for more information. In the GOA, ITACs equal the full TAC except for pollock, Pacific cod, flatfish, and "other species. " The ITACs for these four species or species groups equal 80 percent of the TACs. The remaining 20 percent of the TACs are established as a species specific reserve that also is proposed to be eliminated under Option A.

The interim PSC limits are one quarter of the annual limit and PSC reserves. A PSC reserve of 7.5 percent is set aside to establish the prohibited species quota (PSQ) for the CDQ program (50 C FR § 679.21(e)(1)(i)). For interim specifications PSQ reserves are subtracted from the previous year's PSC limit and 25 percent of the remaining amounts is established as an interim value until final specifications are adopted.

NMFS publishes the interim specifications in the Federal Register as soon as practicable after the October Council meeting and prior to the December meeting. Retention of sablefish with fixed gear is not currently authorized under interim specifications. Further, existing regulations do not provide for an interim specification for the CDQ non-trawl sablefish reserve or for an interim specification for sablefish managed under the IFQ program. This means that retention of sablefish is prohibited prior to the effective date of the final harvest specifications.

Third, final TAC and PSC specifications are recommended by the Council at its December meeting following completion of analysis of any new stock status information. These TAC specifications and PSC limits, and apportionments, are recommended to the Secretary for implementation in the upcoming fishing year. With the final specifications, most of the non-CDQ reserves are released and the final TAC is increased by the amount of reserves released. Currently, the final specifications are typically implemented in mid to late February and replace the interim specifications as soon as they are in effect.

Table 1.1 **Current FMP timeline for annual harvest specification procedure.**

September	Plan Teams review models for ABC recommendations for a number of groundfish species.
October	Council approves proposed harvest specifications based on current year's harvest specifications
November	Proposed specifications are published[1] Interim specifications are published[1] Plan Teams provide final groundfish ABC recommendations
December	Council approves final groundfish specifications
January	Non-trawl groundfish fisheries open January 1 and trawl fisheries open January 20 with interim specifications equal to 25% of proposed specifications (with several exceptions)
February	Non-specific reserves released and final specifications are published[2]

[1]Publication of proposed and interim specifications can occur as late as December.
[2]Publication of final specifications can occur as late as March.

Compliance with the Magnuson-Stevens Act, NEPA, the Endangered Species Act (ESA), Executive Order 12866 (EO 12866), and the Regulatory Flexibility Act (RFA) requires the development of detailed analyses of the potential impacts of the harvest specifications. This process usually involves the development of the SAFE, NEPA and RFA documents first, with consultations on ESA listed species and essential fish habitat (EFH) based on the preliminary preferred alternative in the NEPA document. These analyses are drafted to inform decisionmakers within the Council and NMFS.

An EA is normally written each year for the harvest specifications. The draft ESA and EFH consultations may be included in the draft EA as appendices to provide opportunity for public review and comment, and for the decision makers to consider ESA and EFH concerns before making a final decision. The regulatory impact review (RIR) required under EO 12866 is incorporated into the EA. The RFA documents provide analysis of the potential impacts of the action on small entities. Development of these analyses requires a number of analysts in the NMFS Alaska Region office and the AFSC. Four to six months are needed to do an adequate job of drafting these analytical documents, and an additional month may be needed to finalize the documents after the Council makes its final recommendation on harvest specifications. However, currently, only about one week is available to draft the EA for Council review in December, based on the final SAFE reports.

The current process used by the Alaska Region to publish most rules involves the Sustainable Fisheries Division drafting the rule package, with review by the Regional Enforcement Division, Protected Resources Division, Habitat Conservation Division, Restricted Access Division and the Regional General Counsel. After Regional review is completed, the rule is forwarded to Headquarters, the NMFS Office of Sustainable Fisheries in Silver Spring, Maryland, where it undergoes a number of reviews within NMFS before forwarding to NOAA General Counsel. After clearing NOAA, the rule is reviewed by Department of Commerce (DOC) and usually the Office of Management and Budget. OMB review has been waived for harvest specifications in the past on the basis that the harvest specifications process was part of a framework process. Because of the amount of discretionary items in the harvest specifications now, OMB review may be required for all future harvest

specifications rulemaking, increasing review time. After the rule has cleared NOAA, DOC, and OMB, the rule is forwarded to the Office of the Federal Register. This Headquarter's review process normally takes at least 30 days for a proposed rule, but can take much longer depending on the complexity of the rule, degree of controversy, or other workload priorities within different review tiers. The review process is repeated for the final rule and may or may not include additional OMB review, depending on the nature of the action.

Public involvement may occur at a number of stages during harvest specifications development. Table 1.2 provides an overview of the points of decision making and the opportunity for public comment. Public comments are welcomed and encouraged throughout the Council process. Comments received before and during the December Council meeting are considered in developing the annual specification. Comments received by NMFS on the proposed rule are not likely to have much relation to the annual specifications because the proposed rule contains the previous year's harvest specifications and not the Council's recommended specifications. Once the Council makes a recommendation, the Secretary is required by the APA and the Magnuson-Stevens Act to provide opportunity for public review and comment on the proposed action that the Secretary will take, based on the Council's recommendations. Public review and comment during Council decision making can not substitute for the opportunity for public review and comment required by the statutes during proposed rulemaking.

Table 1.2 Current Groundfish Harvest Specifications Setting Process

Time	Activity	Opportunity for Public Involvement	Decision Points
January to August (of year prior to fishing year)	Plan and conduct stock assessment surveys	Casual (staff and public may interact directly with stock assessment authors)	Cruise Plans finalized Scientific Research Permits issued Finalize lists of groundfish biomass and prediction models to be run Staff assignments and deadlines set
August - September	Preparation of preliminary SAFE Reports Council Plan Teams meeting Initiation of informal Section 7 Consultation	Open Public Meetings *Federal Register* Notice of Plan Teams' Meetings	Stock assessment teams fully scope out work necessary to complete stock chapter, models to run, emerging ecosystem issues
September	Staff draft proposed and interim harvest specifications notices and EA/IRFA based on current year's specifications.	None	Proposed and interim specifications are formula driven based on current year Harvest specifications
October 1-7 or so	October Council Meeting Presentation of preliminary SAFE, highlights of differences seen in recent surveys and ecosystem from past years.	Open Public Meeting *Federal Register* Notice of initial action on next year's Harvest specifications as an agenda item	Council recommends interim and proposed Harvest specifications.

Time	Activity	Opportunity for Public Involvement	Decision Points
Late October	NMFS submits interim and proposed specifications package to HDQs.	None	Secretarial review of Council recommendation
November	November Plan Teams' Meetings EA/IRFA for final specs. drafted prior to and during Plan Team meetings. Finalize SAFE Reports.	Open Public Meetings *Federal Register* Notice of Plan Teams' Meetings	Plan Team makes its TAC recommendations Determination of whether Section 7 Consultation has to be formal or informal
November - December	File interim and proposed specification rule with *Federal Register*	Written comments accepted on 15-60 day (usually 30) comment period for proposed and interim rule. Specifications announced in the proposed rule **are not** the same as the final specifications that will be in the final rule.	Interim specifications effective on publication. Not realistic documents for which to invite public comments; however, by regulation, comments are accepted and are responded to in preamble of the final rule
December 2-10	December Council Meeting. Release and present Draft EA containing Final SAFE Reports, Ecosystem information, Economic SAFE	Open Public Meeting *Federal Register* notice of next year's TAC and PSC specifications as an agenda item. Last **meaningful** opportunity for comments on the next year's quotas.	Determine amount to nearest mt of next year's TAC and PSC quotas. Determination of no effect to Essential Fish Habitat. ESA Section 7 consultation concluded.

Time	Activity	Opportunity for Public Involvement	Decision Points
December 11-25	NMFS staff draft final harvest specifications rule	Comments related to information released prior to and during Council meeting may still be trickling in. Those comments are given consideration in final edits of the EA.	No original thinking occurs
December 25-31	Harvest specifications EA finalized.	No public comment period. Notices of intent to sue should be filed within 60 days of FONSI	FONSI determination
February of **subject fishing year**	Submit final rule to Secretary for filing with Office of Federal Register	None	Secretarial approval of Council recommendation
February of **subject fishing year**	*Federal Register* publication of Final Rule	None. Administrative Procedures Act sets up 30 day cooling off period that may be waived.	Final harvest specifications replace interim specifications on date of publication.

1.3 Problem Statement

The existing harvest specifications process is problematic as NMFS and the Council strive to be consistent with the national standards in the Magnuson-Stevens Act, (§ 301(a)) and meet all the statutory rule making requirements. NMFS must comply with the following statutes during the rule making process.

The Administrative Procedures Act:
§ 553 (b) requires NMFS to publish proposed regulations in the Federal Register.
§ 553(c) requires NMFS to provide "interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation" and NMFS must consider the relevant comments received.
§ 553(d) The rule is effective 30 days after the date of publication of the final rule in the Federal Register, unless the 30 days delay is waived for good cause.

Magnuson-Stevens Act:
§ 304(b)(1) The Secretary must immediately evaluate Council transmitted proposed regulations and determine within 15 days if the proposed regulations are consistent with FMPs, and applicable laws.
§ 304(b)(1)(A) Within the 15 days of evaluation and an affirmative determination, the Secretary shall publish proposed regulations in the Federal Register with a 15-60 day public comment period.
§ 304(b)(3) Within 30 days of the end of the comment period, the Secretary must publish final regulations and explain any changes that were made between the proposed and final regulations.

The current NMFS rulemaking process requires approximately six months from the date the Council recommendation is made to when the final rule is effective. In the current process, final stock assessment information used to develop harvest specifications is available 6 weeks (mid November) before the beginning of the fishing year. At least one month is needed by the Council to review the information and analysis and develop recommendations, The Council then makes its recommendations in mid December. Therefore, it is difficult for NMFS to do proposed and final rule making based on the final Council recommendation before the beginning of the fishing year.

In order to meet the 15 day Secretarial evaluation, determination and proposed rule publication deadline in the Magnuson-Stevens Act, the Council's proposed harvest specifications would need to be known and analyzed and draft regulations would need to be ready before the official transmittal by the Council for NMFS' action. Under the current NMFS regulatory review process, publishing proposed rules within 15 days of Council transmittal of a proposed action is very unlikely to occur. Likewise it is also unlikely that a final rule can be published within 30 days of the end of the comment period because of the time necessary to review comments and complete the drafting and review of the final rule package and submittal to the Federal Register. The proposed action analyzed in this EA/RIR/IRFA does not address this difficulty in meeting these deadlines. These deadlines should be examined during the reauthorization of the Magnuson-Stevens Act.

The APA requires that the public has the opportunity for review and comment on the proposed rule and supporting analysis that is used for the proposed and final rules. Under the current process, the analyses supporting the final rule are the November SAFE reports, EA/RIR/IRFA and ESA and EFH consultations that are completed after the December Council meeting. A final rule can not be significantly changed from a proposed rule without an additional rule proposal and opportunity for public review and comment on the changes. Concerns have been raised about the current process of publishing proposed specifications prior to the December Council meeting which contain harvest levels that are not the same levels that will actually be implemented, establishing interim specifications based on these proposed specifications, and preempting public opportunity to formally review analyses and comment on the Council's December recommendations for the upcoming year's harvest specifications. The public is notified and given opportunity to comment on proposed specifications that are not a true representation of the specifications that will be in the final rule.

Using 1996 as an example, the absolute difference between proposed and final TACs for the BSAI averaged 22 percent over all species and species groups, and individual species TACs ranged 0-200 percent. For the GOA the difference averaged 7 percent over all years with a range of 0-87 percent for individual species. If the public had perceived that the proposed specifications were an indication of what the final TACs and apportionments would be, they would have been misled. Any public comments received on the proposed rule would have had very little meaning because, although the proposed ABCs, TACs, and PSC limits/apportionments, were based on the best available stock assessment and harvest trends, these proposed amounts and trends would change before the start of the upcoming fishing year. Further, it is difficult under the current timeline to develop and make available to the public final analyses to accompany proposed and interim specifications prior to January 1.

The publication of proposed specifications each year can confuse the public, because incomplete and possibly erroneous information is provided due to the need to adhere to a strict timeline in order to comply with all relevant rule making statutes. Public comment on these specifications rarely occurs due to the fact that most informed, interested parties realize that those numbers will change, sometimes considerably, after release of the final SAFE reports and the December Council meeting.

The Federal Register publication of proposed specifications in November or December, therefore, does not meet the intended purpose of public notification and comment under the APA.

At the same time that NMFS is meeting requirements for proposed and final rule making, the actions must also be consistent with the national standards in the Magnuson-Stevens Act, (§ 301(a)). National Standard 2 requires that conservation and management measure be based on the best scientific information available. For harvest specifications the most critical decision making reports (SAFE reports) are completed in November of each year. These reports are based on new data from resource assessment surveys which become available under different schedules for different areas and species. Currently, the anticipated schedule is as follows:

Schedule	**Survey**
Annual	Bering Sea summer bottom trawl survey
Biennial	Bering Sea summer bottom trawl slope survey (first year is 2000)
Annual	Winter pollock spawning survey in Shelikof and Bogoslof
Biennial	Aleutian Islands and Gulf of Alaska summer trawl surveys: 2001 GOA; 2002 AI
Biennial	Acoustic surveys in Bering Sea and GOA: 2001 - GOA; 2002 - BS pending vessel availability and West Coast hake survey conflicts
Annual	GOA longline sablefish survey
Biennial	BSAI longline sablefish survey, BS odd years, AI even years

Publication of meaningful proposed specifications is currently not practicable, because much of the data necessary for calculating updated ABCs for the GOA and the Aleutian Islands are not available until late October or later. Bering Sea survey data are available in late August or early September. For the BSAI, the annual September Plan Team meeting produces final assessments for some species, but for most, stock assessment results still are preliminary. Many assessments are updated after all summer trawl survey data become available in October. As the year progresses, the Plan Team and the Council also acquire updated information on harvest trends. Although the proposed and final GOA ABCs do not change as much as those for the BSAI, proposed OFLs and ABCs are not produced for some species until the November Plan Team meeting. Regardless of the survey schedule for individual stocks, the SAFE reports are not completed and ready for Council consideration until mid November.

Because the interim specifications are based on the proposed specifications, they do not take into account the recommendations contained in the Plan Team's final SAFE documents or the recommendations coming from public testimony, the SSC, AP, and the Council at its December meeting. In addition, the interim TAC allocates one fourth of the initial TAC and PSC amounts to the first quarter and this has been found to be an inadequate amount for those fisheries that attract the greatest amount of effort at the beginning of the fishing year[3]. The Bering Sea fixed gear cod fishery, and the rock sole fishery are often constrained by the halibut PSC limit early in the fishing year. Those fisheries that are allocated their first seasonal allowance based on the previous year's TAC suffer if the new seasonal allowances recommended by the Council increase. That is, they may forego the benefits of that increase until the following year. This is true for the pollock fishery and the Aleutian Islands Atka mackerel fishery because they are high value fisheries that focus fishing effort early in the fishing year. Concern exists that the current interim specifications process does

[3]Harvest amounts of GOA and BSAI pollock and BSAI Atka mackerel under the interim TAC are limited to the proposed first seasonal allowance for each species.

not provide for meaningful public comment and that artificial constraints are placed on the fishery in the interim period which may impact the fishery as described above. The interim period may also undermine the intent of Steller sea lion protection measures that establish seasonal dispersion of the fisheries.

1.4 Reserve TAC: The Current Process and the Need for Change

Under existing regulations, the TACs are reduced by specified percentages to establish various reserves as follows:

BSAI Groundfish Reserves:

(1) 15 percent of the BSAI TACs for each target species and the "other species" category (except pollock and the hook and line and pot gear allocation for sablefish); This reserve amount is split 7.5 percent to CDQ and 7.5 percent to nonspecified reserves.

(2) BSAI CDQ: 20 percent of the fixed gear allocation of BSAI sablefish; 7.5 percent of each TAC category for which a reserve is established, i.e., half the reserve established under (1) above; 10 percent of pollock; and 7.5 percent of each prohibited species catch limit.

GOA Groundfish Reserves:

20 percent of the GOA TACs for pollock, Pacific cod, flatfish, and "other species";

Detailed information regarding apportionments can be found in 50 CFR § 679.20 (b) and 50 CFR § 679.21 (e).

1.4.1 BSAI Groundfish Reserves

Under the American Fisheries Act (AFA), BSAI pollock is fully allocated to different sectors of the fishing industry, including CDQ. Ten percent of the pollock TAC is allocated to the CDQ program under the AFA, and 7.5 percent of the TAC for the other groundfish species are placed in a reserve assigned to the CDQ program. Part of the pollock TAC is also set aside for an annual incidental catch allowance. Pollock reserves are not required. The reserve for the remaining groundfish species is 7.5 percent of the total allowable catch for target species and other species category (except pollock and hook and line and pot gear allocation for sablefish) which is set aside at the beginning of the fishing (calendar) year for later allocations. This reserve is not designated by species, and any amount of the reserve may be apportioned to a target species (except for the fixed gear allocation for sablefish, or the "other species" category) so long as apportionments do not result in overfishing. Any reserve apportioned to Pacific cod is allocated by gear type as established in the FMP. Reserves are scheduled to be released by the Regional Administrator on or about April 1, June 1, and August 1. In recent years, reserves have not resulted in TAC being reapportioned from one species to another, although nothing precludes this. For 2002, the nonspecified reserves for a number of target species were released with the setting of final TAC for BSAI and GOA (67 FR 956, January 8, 2002).

The nonspecified reserves were developed to provide flexibility to the management system when the fishery and processing were performed entirely by foreign fleets or under the joint venture system where American catcher vessels supplied groundfish to the foreign processors. The groundfish catch is now entirely domestic and the reserve is structured to provide some latitude in the management of

individual TACs. Conceptually, the reserves can allow managers to increase a TAC of groundfish up to that species' or species group's ABC, so long as the optimum yield for the entire fishery of 2 million mt is not exceeded. This option has been exercised once in the years since the effort in the groundfish fishery became entirely domestic (1991).

The reserve system is expected to provide a 'buffer' for the in-season management of the fisheries. However, the buffer really doesn't slow the catch as the managers and fishermen know of the reserve and expect to catch the entire TAC. The same effect can be accomplished by establishing a limited directed fishing allowance (50 CFR § 679.20 (d)). Since the reserve system does not provide significant increases in efficiency of the fishery, its effect is to increase confusion regarding which numbers are currently available for harvest and increase the administrative burden on the fishery managers to provide regulatory actions to add the reserve back into the TAC amounts. In addition, the American Fisheries Act (AFA) requires that catch limits be set for AFA qualified vessels, based on a proportion of the TAC. Each time a reserve amount is apportioned to the TAC, the AFA catch limits must be adjusted as well.

1.4.2 GOA Groundfish Reserves

In the Gulf of Alaska 20 percent of the total allowable catches of pollock, Pacific cod, flatfish, and other species are set aside as reserves at the beginning of the fishing (calendar) year for later allocations. Reserves of pollock and Pacific cod are apportioned between inshore and offshore sectors. Reserves are scheduled to be released by the Regional Administrator on or about April 1, June 1, and August 1, or when NMFS determines it is appropriate. For 2002, all reserves were released with the setting of the final TAC (67 FR 956, January 8, 2002).

From 1997 to 2000, reserves were only used for the Pacific cod fishery. This fishery occurs early in the year and incurs high catch rates. The reserves were used to establish a buffer to prevent the fishery from exceeding the directed fishing allowance established by 50 CFR § 679.20 (d). This process has been cumbersome and the problem can be solved more easily under existing regulations, by establishing a conservative directed fishing allowance. As in the BSAI, establishing reserves not only requires additional work as the final specifications of groundfish are established, but the catch limits (sideboards) for vessels qualified under the American Fisheries Act must be revised as the reserve apportionments are made. This creates confusion not only as to what the "full" TAC is, but requires the AFA vessels to revise their fishing plans for groundfish sideboard amounts mid-season.

1.5 Updating FMP language.

The GOA FMP and the BSAI FMP have not been changed to reflect the nature or extent of current fishing practices (NPFMC 1999a, 1999b). Groundfish fisheries off Alaska initially were exclusively conducted by foreign vessels. Gradually, the ratio of foreign to American fishery participants changed until 1991, when the groundfish fishery participants were limited to American owned vessels and processors. A detailed description of the history of foreign and domestic groundfish fisheries is contained in Section 3.3 of the SEIS for Amendments 61/61/13/8 for American Fisheries Act provisions (NMFS 2002).

The FMPs have been amended over sixty times since approved in the late 1970s. Each amendment has dealt with a specific aspect of the groundfish fisheries and has not necessarily been used to clean up obsolete language. The result is FMPs that continue to describe conservation and management measures for the nonexistent foreign fishery participants. References to foreign fishing under

objectives and conservation measures should be removed to make the FMPs more concise and to accurately describe the nature of the current groundfish fisheries, as required by the Magnuson-Stevens Act.

If the proposed action to change the harvest specifications process is adopted, several sections of each FMP will be updated to accurately describe the responsibilities of the Plan Team in providing information to the Council for harvest specifications. During the early development of the FMPs, the Plan Teams provided management assistance to the Council for harvest specification and FMP development. The FMPs are now more fully developed, and the focus of the Plan Teams has shifted to stock assessment activities, including implementation of the processes described in the FMPs to develop ABC and OFL recommendations. Currently, the FMPs require the Plan Teams to provide economic analyses of PSC limits and apportionments. In recent years, this function has been performed by Alaska Fisheries Science Center economists. An annual economic analysis of the groundfish fisheries (Economic SAFE report) including PSC information is included as an appendix to NEPA analysis for the Council's consideration in recommending harvest specifications.

Section 13.4.2.3 in the BSAI FMP and Section 4.2.3.1 in the GOA FMP require the Plan Teams to provide recommended seasonal apportionments and fishery allocations of PSC limits (NPFMC 1999a, 1999b). Currently, the Plan Teams provide a review of the previous year's apportionments and allocations of PSC limits and catches of PSC. Apportionments and allocations of PSC limits are primarily developed and recommended by the Council process and involve fishing industry considerations that are not available to the Plan Team for making apportionments and allocations recommendations. If the proposed action is adopted, the FMP language regarding the Plan Teams' role in PSC limits allocations and apportionments would be limited to providing this type of information if requested by the Council, rather than requiring this information as part of the SAFE reports.

1.6 Objectives of this Action and Considerations

The proposed action changes the process for establishing harvest specifications, eliminates nonspecified BSAI and GOA groundfish reserves, deletes obsolete foreign fishing references in the FMPs, and alters language dealing with Plan Team responsibilities. Its objectives are: (1) to manage fisheries based on best scientific information available, (2) to provide for adequate prior public review and comment to the Secretary on Council recommendations, (3) to provide for additional opportunity for Secretarial review, (4) to minimize unnecessary disruption to fisheries and public confusion, and (5) to promote administrative efficiency.

The use of best available scientific information is critical to a successful harvest specifications process. The annual or biennial resource survey results are part of the information used to define the current stock condition of each target species or species group. Catch information is also important in understanding the removals of a species over time and may affect the projected amount of fish available for the following year. Fine tuning the assessment models and updating the projections of fish available for harvest are necessary and time consuming activities that transform raw data into the "best available scientific" information for developing harvest specification, as required by the Magnuson-Stevens Act. At the conclusion of summer surveys, survey data may be available, but it is not considered "best available science" until analyzed and put into a format that can be used for establishing fishery management measures. The SAFE reports, ESA and essential fish habitat (EFH) consultations, and NEPA documents are considered the "best available science" for the harvest specification process. Because of the large number of species managed in the Alaska groundfish

fisheries and the complexity of the marine environment, development of the analyses requires the involvement of numerous scientists from the Alaska Fisheries Science Center (AFSC) and Alaska Region and is estimated to require four to six months. Approximately four months are needed for the development of the SAFE reports and up to five months are needed for the completion of other analytical documents, such as ESA, NEPA and RFA analyses. Overtime, the management of the Alaska groundfish fisheries has become more complex with additional species and methods for providing stock assessment information. The AFSC scientist are finding it increasingly challenging to complete detailed analysis of data and provide reports in time for the December Council meeting. Additional time for analysis would likely improve the quality of the information that is used for management decisions.

The Magnuson-Stevens Act requires NMFS to provide at least 15 days and no more than 60 days for public review and comment on any proposed rule. For more complex rules, such as harvest specifications, it may be more appropriate to provide more than 15 days for public review and comment. Once the comment period is over, NMFS must develop the final rule, including responses to comments and repeat the agency rule review process for a proposed rule, as described in section 1.2. Once the final rule is published, APA requires a 30 day cooling off period before the rule goes into effect. This time period may be waived for good cause. Approximately, five to six months are required to take the Council's recommended harvest specifications through the proposed and final rulemaking process, depending on other review priorities in NMFS, NOAA General Counsel, OMB, and the Department of Commerce.

1.7 Related NEPA Documents

The original environmental impact statements (EISs) for the BSAI and GOA FMPs were completed in 1979 and 1978, respectively (NPFMC 1979 and NPFMC 1978). NMFS issued a Supplemental Environmental Impact Statement (SEIS) on the action of TAC setting in December 1998 (NMFS 1998a) which analyzed the impacts of groundfish fishing over a range of TAC levels (alternatives).

NMFS notes that in a July 8, 1999 order, amended on July 13, 1999, the Court in Greenpeace, et al., v. NMFS. et al., Civ No. 98-0492 (W.D. Wash.) held that the SEIS did not adequately address aspects of the GOA and BSAI groundfish fishery management plans other than TAC setting, and therefore was insufficient in scope under National Environmental Policy Act (NEPA). In response to the Court's order, NMFS has developed a draft PSEIS for the GOA and BSAI groundfish fishery management plans which became available for public review on January 26, 2001 (NMFS 2001c). The draft PSEIS is available through the NMFS web site at http://www.fakr.noaa.gov/. The draft is currently being revised based on public comment and is scheduled for release in the fall of 2002.

Because the TAC setting process was determined to be adequately addressed by the 1998 SEIS, NMFS believes that the discussion of impacts and alternatives in the 1998 SEIS is directly applicable to the action analyzed in this EA/RIR/IRFA. Therefore, this EA/RIR/IRFA adopts the discussion and analysis in the SEIS (NMFS 1998a) and adopts by reference the applicable status and effects descriptions in the draft PSEIS (NMFS 2001c).

1.8 Public Participation and Issues Identified

This version of the draft EA/RIR/IRFA has not been subject to public review. Earlier versions of this draft EA/RIR/IRFA, including alternatives similar to 1 through 4, the alternatives not further analyzed, and the reserve option to the alternatives, were reviewed at the June 2000, January 2001

and February 2001 Council meetings (Agenda item D-1b), and the June 2000 version was reviewed during the joint Plan Team meeting in November 2000. The May 2002 version was reviewed during the June Council meeting at which time the Council recommended several revisions and release to the public for review. These meetings were open to the public.

Harvest specifications process issues identified during the development of the NEPA analysis and addressed in this EA include:

1) Use of survey data in development of stock assessments and ABC recommendation, (Section 4.1)
2) Ensuring the administrative process complies with all applicable laws and executive orders, (Sections 1.2 and 2.0)
3) Potential impacts on management of target species, (Section 4.1)
4) Interactions with State managed fisheries, (Section 4.8)
5) Provide one set of numbers for the industry to plan fishing activities, (Section 1.0) and
6) Interactions with individual fishing quota (IFQ) and Community Development Quota (CDQ) programs. (Sections 4.9 and 5.11)

1.9 Recent Court Decision

Recently, the federal court of the Northern District of California issued an order in favor of the Natural Resources Defense Council (NRDC) in litigation commenced by NRDC, *Natural Resources Defense Council V. Evans*, Case No. C 01-0421 JL (N.D. Cal. August 20, 2001). The NRDC challenged the Pacific Coast groundfish fishery annual harvest specifications process followed by the Pacific Fishery Management Council and authorized by the Secretary of Commerce, as well as the 2001 harvest specifications recommended by the Pacific Council and approved by the Secretary. The court decided in favor of the plaintiff, ruling among other things, that NMFS must publish the Pacific Coast groundfish fishery's proposed annual groundfish specifications in the Federal Register for public notice and comment prior to publication of final groundfish specifications.

This case is currently under appeal regarding the Magnuson-Stevens Act and Administrative Procedures Act (APA) findings. It is unknown if a challenge of the harvest specifications process currently used by NMFS for the North Pacific groundfish fisheries would have the same results under this court's review. Regardless, an alternative that met the objectives for this action would likely meet the findings specified in this case.